



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0850]

RIN 1625-AA00

Safety Zone; Delaware River and Schuylkill River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 200-yard radius of the derrick boat ELIZABETH for the duration of object removal operations within the Delaware and Schuylkill Rivers. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by submerged object removal operations. Entry of vessels or persons into the zone is prohibited unless authorized by the Captain of the Port Delaware Bay, or certain criteria are met.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 10, 2019. For the purpose of enforcement, actual notice will be used from October 17, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0850 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for submerged object removal

operations. The rule must be in force by October 17, 2019, to serve its purpose of ensuring the safety of working crews and the general public from hazards associated with submerged object removal operations, to include possible diving operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to mitigate the potential safety hazards associated with submerged object removal operations on the Delaware River and Schuylkill River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the submerged object removal operations. This rule is needed to ensure the safety of personnel, vessels, and the marine environment within a 200-yard radius of submerged object removal operations.

IV. Discussion of the Rule

This rule establishes a safety zone from October 17, 2019, through November 10, 2019. The safety zone includes all navigable waters within 200 yards of the derrick boat ELIZABETH while conducting submerged object removal operations on the Delaware River from Philadelphia, PA, to Trenton, NJ, and on the Schuylkill River in Philadelphia, PA. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative unless certain criteria are met.

A vessel may transit the safety zone without obtaining permission from the COTP if the derrick boat ELIZABETH is contacted, via VHF-FM channel 13 or 16, at least one hour prior to arrival to arrange safe passage. A vessel transiting the safety zone must do so in a manner that maintains the greatest safe distance possible from the derrick boat ELIZABETH. Any vessel that transits in or near the safety zone must do so at the minimum safe speed required to maintain steering and reduce wake.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and traffic management of the safety zone. The safety zone, lasting approximately three weeks, will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic. The safety zone only encompasses a small portion of the navigable waterway. The safety zone only covers navigable waters within 200 yards

of the derrick boat ELIZABETH while conducting submerged object removal operations on the Delaware River from Philadelphia, PA, to Trenton, NJ, and on the Schuylkill River in Philadelphia, PA. Vessels wishing to transit the safety zone will generally be permitted, without delay, if notification is given at least one hour prior to arrival at the derrick boat ELIZABETH and safe passage is arranged.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone. It is categorically excluded from further review under paragraph L[60a] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0782 to read as follows:

§ 165.T05-0782 Safety Zone, Delaware River and Schuylkill River, Philadelphia, PA.

(a) Location. The following area is a safety zone: All navigable waters within 200 yards of the derrick barge ELIZABETH while the vessel is conducting object removal operations within the Delaware and Schuylkill Rivers.

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) In accordance with the general safety zones regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit the safety zone described in paragraph (a) of

this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone contact the COTP or the COTP's representative via VHF-FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) A vessel may transit the safety zone described in paragraph (a) of this section without permission from the COTP if all of the following criteria are met:

(i) The transiting vessel contacts the derrick boat ELIZABETH at least 1 hour prior to arrival to arrange safe passage.

(ii) The transiting vessel maintains the minimum safe speed to reduce wake and maintain steerage.

(iii) The transiting vessel maintains the maximum safe distance from the derrick boat ELIZABETH.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. Enforcement of the safety zone will begin at 5:00 am on October 17, 2019, and will continue through 10:00 pm on November 10, 2019.

Dated: October 16, 2019.

Scott E. Anderson,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.

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